

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Fair Isaac Corporation,)
) File No. 16-CV-1054
) (WMW/DTS)
Plaintiff,)
)
v.) Minneapolis, Minnesota
) February 14, 2018
Federal Insurance Company,) 3:30 p.m.
)
Defendant.)

BEFORE THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(AUDIO TRANSCRIPTION OF: MOTIONS HEARING)

APPEARANCES

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P R O C E E D I N G S

IN OPEN COURT

THE COURT: Okay. All right. We are on the record in the matter of Fair Isaac Corporation v. Federal Insurance Company, Case No. 16-CV-1054.

Will counsel for the plaintiffs note your appearance for the record, please.

MR. HINDERAKER: Your Honor, for the plaintiff from Merchant & Gould, Allen Hinderaker and Heather Kliebenstein, and also for in-house at Fair Isaac, James Woodward.

THE COURT: Very well. Good afternoon, everyone. And for the defendant.

MR. DATZOV: Good afternoon, Your Honor. Fredrikson & Byron on behalf of the defendant, Federal Insurance Company. My name is Nikola Datzov, and with me is Lora Friedemann.

MS. FRIEDEMANN: Good afternoon.

THE COURT: Good afternoon.

Here's what I would like to do in terms of how we handle this: Jeff Keyes used to do this, and I'm going to take his process or his procedure. What I'd like to do -- first, we'll start with the defendant's motion to compel. It was the first filed. And if I can have both, whoever from the defendants and whoever from the plaintiffs are

1 going to argue this, if you would both just go to the podium
2 with me -- or with each other, rather. I'd like to just
3 start there. And I'll just let you know it's my intention
4 to get through these fairly quickly. And I don't want to
5 keep you from arguing or saying things that you feel need to
6 be said, but I also have some questions.

7 So if we start with the requests for production
8 that the defendants seek to compel, 16 to 19, which I would
9 lump together as a group -- actually, let me stop for a
10 second. I see you both with some level of technology. Do
11 you need either the document camera or anything?

12 MR. HINDERAKER: I do not, Your Honor.

13 MR. DATZOV: I do not, Your Honor.

14 THE COURT: Okay. I would lump those four
15 together as being documents relating to other licenses and
16 the revenues or license fees that relate to them, and then
17 you have the sort of omnibus request for all licensing
18 agreements, which is number 19.

19 So start with the defendant. Why do you think
20 those are relevant, and why do you -- well, start there.
21 Why are those relevant to this case?

22 MR. DATZOV: Sure, Your Honor. And I think when
23 we -- when I was approaching the issue of the licensing
24 revenues, based on the objections that I saw from FICO, I
25 was really taking the licensing agreements and the licensing

1 revenues together as one discovery. But I think the
2 objections that I've seen from FICO apply to each one.

3 So with regard to relevance, the revenues,
4 specifically just the amounts, not taking into account the
5 agreements that go with them, which would mean any licensing
6 agreement that includes amounts, but just literally the
7 gross numbers, those are relevant because they provide
8 another way of us calculating damages. That's information
9 that we would eventually provide to our expert to say, okay,
10 well, let's look and see what the revenues for the software
11 at issue in this case was doing. Was there a decline in the
12 value of the software? Were they able to sell the software?
13 All of that would be complimentary to ultimately what the
14 value of the software license in any given year would be.
15 And I'm sure that that evolves.

16 THE COURT: Is it not the case -- I think
17 Mr. Hinderaker's response to that is something on the order
18 of but this is a breach-of-contract case. We have a
19 contractual amount you're obligated to pay. What others may
20 or may not have paid, not really relevant to that damage.
21 So what's the response to that?

22 MR. DATZOV: Well, Your Honor, I think that
23 argument would hold better if the estimation of damages was
24 in line with what the actual agreement for the price of the
25 license was, and it's not for two reasons.

1 First of all, it's not in line with how the
2 damages are being calculated. I think it's undisputed --
3 and Mr. Hinderaker can correct me, but I think it's
4 undisputed that the license at issue was, in fact, an
5 enterprise-wide license, and so one would expect that if a
6 party who already has an enterprise-wide license is going to
7 be asked to pay a bit more for some additional use, that the
8 model would still continue to be an enterprise-wide license;
9 it's not, at least under the damages theory that plaintiff
10 is presenting as we now understand it. They are using a per
11 application license, meaning they would ask our client to
12 pay for each individual application separately, not just
13 based on the license it already had. And, as a result of
14 that, the second disparity is that there's a huge disparity
15 in the damages. The amount of the actual license that our
16 client had, the annual value was about \$150,000. The annual
17 value of the license that they are now asking for, which is
18 the same scope of use, as I understand it, is more than 30
19 times what the actual value was.

20 So the question of what is the software being sold
21 for is relevant to understand and for us to rebut their
22 assertions for damages.

23 THE COURT: Bear with me for a second.

24 MR. DATZOV: Sure, Your Honor.

25 THE COURT: Well, is there a pricing mechanism in

1 the contract, the existing agreement that is the breach of
2 contract?

3 MR. DATZOV: For additional use, Your Honor, or --
4 there's not a pricing mechanism for any further use, because
5 it's already contemplated that they have wholesale use of
6 it. It's an enterprise-wide license --

7 THE COURT: Right.

8 MR. DATZOV: -- with no limitations on any
9 application, no limitations on any seats. It's use it as
10 you wish.

11 THE COURT: And so -- and I understand that's your
12 -- that's your perspective; the plaintiffs is different.

13 So to the extent that the plaintiff is saying no,
14 you couldn't use it beyond this scope, they're also saying
15 and if you are going to expand the scope, that expansion --
16 our damages would be the price that we would charge you for
17 a similar scope that's expanded, right?

18 MR. DATZOV: That's my understanding of what
19 they're seeking. And I think as -- I think that's the
20 quintessential way that that's usually figured out, Your
21 Honor. Certainly -- I don't think there's any dispute that
22 that's how you calculate the value of the license under
23 copyright law. We've cited a number of cases that provide
24 that. It's the quintessential way. You look at benchmark
25 comparable licenses for what the value of the use was.

1 With regard to breach of contract, I'm not sure
2 that we agree on it, but we're not looking at a reasonable
3 royalty analysis. It's still a question of expectation
4 damages. And they didn't cite a case that says you cannot
5 look to comparable licenses to figure out what the value of
6 a license would be under contract damages. I submit that is
7 what you look at or at least could be one of the things we
8 look at.

9 THE COURT: Okay. Mr. Hinderaker, on this
10 question about the licensing revenues or license fees.

11 MR. HINDERAKER: Yes, sir. I'd like to back up
12 just a little bit --

13 THE COURT: Okay.

14 MR. HINDERAKER: -- in terms of the background of
15 the claims, as well.

16 This license agreement that the defendant had has
17 been terminated, and the question is not one of expanded use
18 from what it had. The question is, is that it has no right
19 to use at all. We have cited cases, and this contract is
20 governed by New York law, and the cases that we cite from
21 New York say clearly that hypothetical agreements what
22 could've been negotiated is not relevant to a contract
23 damages claim. When we are dealing with the breach of
24 contract, the entitlement for that breach is the market
25 value of what has been taken. This is not a consensual

1 arrangement at this point. It doesn't matter -- we do not
2 have a willing buyer and a willing seller or a willing
3 licensor and a willing licensee. We have a party in breach.

4 So given the fact that every agreement that's
5 consensual that FICO has with another licensee is
6 negotiated, bespoke if you will, we are certainly not in
7 that situation.

8 And I also think in terms of the document
9 requests, Your Honor, that it's useful to look at what the
10 request actually is, which is a little bit different from
11 the discussion so far. So, for example, Document Request
12 No. 16 is all documents that refer to licensing revenues
13 from 2006 to the present. There's no connection of those
14 licensing revenues to a scope of use, to a size of use, to a
15 volume of use to the licensee's characteristics. And we're
16 talking about a damages claim that at least with respect to
17 the client licensee, Chubb & Son, begins on the date of
18 termination of March 16, 2016 -- March 31, 2016. The value
19 of what Federal has taken as of 2016 is part of our damages
20 analysis, but why we ask for all documents that relate to
21 revenue from 2006 to the present disconnected completely
22 from scope of use is a part of our objection.

23 It is also worthwhile noting that -- I have to get
24 my glasses on here -- it's also worthwhile noting that
25 Document No. 17 is asking for all license fees for perpetual

1 licenses from 2006 to the present. Again, there's no
2 connection to scope of use, nature of licensee. It's just
3 money in the air. And as detailed in the Waid declaration,
4 the perpetual license fee for each of the applications that
5 Federal has told us they use is detailed out in William
6 Waid's declaration. That is the market value for each of
7 those applications from the standard FICO pricing relevant
8 at the time of the breach. Were it consensual, there would
9 be other negotiations, but this isn't consensual.

10 Document Request 18 asks for all average per-seat
11 licensing revenue, 2006 to the present; again, disconnected,
12 unrelated, doesn't care, just numbers in the air to scope of
13 use. And the seat licensing has no relevance to this case.
14 Indeed, at the time of the breach with the enterprise
15 license there is no seat pricing at all.

16 So while Your Honor put Document Requests 16, 17,
17 18, and 19 together, I think that 16, 17 and 18 deserve
18 their individual looks because they're just asking for
19 revenue unrelated to scope of license. And then Document
20 Request 19 is the one that asks for every license regarding
21 Blaze Advisor from 2006 to the present. There's no
22 connection to an issue that might be relevant in this case.

23 What I just heard from counsel is now we're going
24 to match up, I guess, every license agreement to whatever we
25 would produce by way of buckets of revenue. That's not what

1 the other requests are asking for.

2 It would be a different subject matter, Your
3 Honor, and I'll only introduce it by way of saying it is a
4 different subject matter, because in the documents on the
5 motion papers Federal tries to justify Document Request 19
6 for every license agreement for the last 12 years as being
7 relevant to the ambiguity that Judge Wright found with
8 respect to one of the provisions, 10.8. And we can talk
9 about that separately if you like, Your Honor.

10 THE COURT: Okay.

11 MR. HINDERAKER: The request itself, of course,
12 isn't limited to that or anything.

13 THE COURT: Right. All right. Well, let me ask
14 defendant another question here.

15 What is the reason for the date that you have
16 chosen in these, 2006 to the present?

17 MR. DATZOV: The significance of the 2006 date,
18 Your Honor, is that's when the agreement was signed. This
19 was more than ten years ago. So the question of what the
20 value would have been throughout the years, again, would
21 have changed throughout the lifetime of the software.

22 Now, I realize that the value of what the license
23 use would have been now is not necessarily dependent on what
24 the use was in 2007. But the negotiations and the formation
25 of the license took place in 2006.

1 So, you know, I think, despite the argument that I
2 heard from Mr. Hinderaker that, oh, well, here's what we
3 would want from a license, that's not the relevant question.
4 The relevant question isn't what FICO wants for damages.
5 The relevant question is what is entitled to damages. And I
6 haven't heard any argument to the contrary that you cannot
7 look to hypothetical licenses under a copyright damages
8 theory.

9 For the contract theory, I just wanted to note I
10 haven't seen any New York cases cited that say that
11 hypothetical agreements are not relevant to a breach of
12 contract for a license. The case that was cited in the
13 brief was a speculation of damages case. It said, well, in
14 a non-disclosure agreement, not a license, we're not going
15 to let you go after real royalties. And it made sense in
16 that case. But I would note that in that very case that
17 FICO is relying on, the court actually did analyze
18 comparable licenses in considering the issue.

19 THE COURT: Okay. Your point -- and, again, I
20 don't mean to -- I don't want to short-circuit things, and I
21 don't mean to lump them all together inappropriately, but as
22 an umbrella to this argument you are saying what they're
23 entitled to, if anything, assuming they prove liability, is
24 the market value of the license we didn't take or pay for
25 after the termination date. And market value, that can be

1 looked at any number of ways, based on the way they have
2 been charging or what the market has been paying for those
3 licenses.

4 MR. DATZOV: I think that's right, Your Honor.
5 And I would point to one additional thing. In its damages
6 response, FICO characterized its own damages as
7 "commercially reasonable fees." I think that's a synonymous
8 meaning with market value.

9 Now, the proposition that it had -- you can
10 unilaterally set that market value, I think, is completely
11 improper. I mean, the standard pricing model that they
12 have, that's the starting point for negotiations. That's
13 not what the parties ultimately have agreed to, at least for
14 some of the licenses. And that's the information we're
15 asking for, is what the parties actually agreed to, not what
16 did you come into the room with.

17 THE COURT: Okay. Mr. Hinderaker, anything
18 further either globally on 16, 17, and 18 or individually on
19 those?

20 MR. HINDERAKER: Globally, Your Honor, counsel has
21 argued comparability. And, of course, the cases that it
22 relies upon to support his position depend upon requests
23 that are directed to comparable situations. And none of
24 these requests make any effort at all to be directed to what
25 might be a comparable situation. They just ask for

1 everything 2006 to date. If -- and it's not for this Court,
2 in my judgment, to blue pencil these requests and write
3 something that's better. Federal can do that on its own if
4 that's what they want, a second set. If there was any merit
5 to what counsel is arguing, then that's limited to what were
6 the negotiated license agreements for similar licensees and
7 similar scopes of use in 2016, the time of the breach,
8 nothing else. Why produce documents that are more than a
9 decade old when the damages arise at that point? So
10 counsel's argument is really a re-writing of the requests,
11 trying to make sense out of them in light of what it
12 contends to be the case.

13 And then the other global comment is that the
14 comment is made that FICO was trying to present a unilateral
15 statement about what market value is. That's not the
16 situation here. As Bill Waid's -- William Waid's
17 declaration details and the rest of the facts in there, FICO
18 begins every negotiation for this product based upon its
19 standard pricing, and that detail is in that declaration.
20 That's not a unilateral. That's what the marketplace has
21 told FICO they do and can do.

22 Now, in every negotiated situation are there
23 negotiations? And there are, of course, not only on terms
24 but on amount of fees. But now we're into a hypothetical
25 negotiation that isn't contract damages. I mean, I

1 understand that the Patent Act says, go through hypothetical
2 negotiation to see what the royalties would be, but this is
3 a contract action, as you mentioned at the outset.

4 So the notion that we're basing our damages on
5 something other than something that's founded in the
6 marketplace itself is wrong.

7 THE COURT: It's both a contract and an
8 infringement action, right?

9 MR. HINDERAKER: Now, these -- it's both contract
10 and a copyright-infringement action. And, of course, the
11 damages that we're talking about right now have nothing to
12 do with what we're seeking by way of copyright infringement.

13 Now, the Copyright Act will tell us that we can't
14 double up, you know, we can't have both.

15 THE COURT: Right.

16 MR. HINDERAKER: I'm not saying we can have both.
17 But license fee damages are one thing. That's what we're
18 talking about now. Disgorgement on the Copyright Act is a
19 different thing and that's what we can talk about later.

20 THE COURT: Right. I think the nub of the issue
21 to me is even saying what you're saying about FICO starts
22 all negotiations at this point, the notion of the market
23 value of what's been taken necessarily presupposes you have
24 a willing seller and a willing buyer. And the willing
25 buyer, presumably, knows something about the market is able

1 to say we may start there, but I'm not going to -- I'm not
2 going to pay more than market value for this. And so to
3 their point, all of these various measures of the value of
4 your market in terms of discovery and the market value of
5 your license, don't they get those -- don't they get to give
6 those to their expert, have their expert say looking at
7 everything, the market value of this is X, not Y, and your
8 experts get to say you're wrong, you used unrelated
9 measures, you used things that weren't comparable, et
10 cetera, et cetera. Isn't that really a battle of the
11 experts, as opposed to discovery?

12 MR. HINDERAKER: One, I understand what you are
13 discussing, Your Honor, that can be a battle of the experts.
14 And I'd also like to go back to the discovery requests that
15 we're responding to.

16 So, for example, I'm aware of a license with
17 another licensee where the scope of the use is to use Blaze
18 Advisor for one purpose on two dedicated CPUs. These
19 document requests ask us to search for every license
20 agreement that we have, regardless of comparability to
21 Federal's use on 15 named applications. That isn't
22 compliant with Rule 1 or Rule 26, to go search for and
23 produce documents which are not comparable. It is the
24 obligation of Federal to define for us what it contends to
25 be comparable, if it's going to ask for documents that go to

1 that issue. What does Federal say is comparable? May I
2 submit, it's not a license with one entity for two CPUs.
3 But yet everything that we have done for 12 years is what is
4 being requested here.

5 THE COURT: Well, and I think -- but I think what
6 they're saying is in terms -- and, again, I wasn't going to
7 19 now. We sort of carved off number 19 for a second. But
8 that documents that evidence revenues or licensing fees,
9 they would say it's all relevant to figuring out what the
10 appropriate amount of damage would be even. If it's not a
11 directly comparable license, the fact that a license like
12 this is only X amount and a license like this is only Y
13 amount, in our case a license like this you can derive some
14 guidance as to its market value.

15 MR. HINDERAKER: By definition a license that has
16 no comparability has no relevance. By definition a license
17 that has no comparability is outside the scope of discovery.

18 THE COURT: Well, I'm not sure I agree with --
19 quite with that categorical statement.

20 MR. HINDERAKER: That is what I -- when we are
21 asking, seeking document requests that ask for everything
22 for 12 years, every -- well, 19 is our agreement. Every
23 agreement for 12 years, even though our damage claim starts
24 in 2016, even though there is no effort to be comparable to
25 licensee or scope of use. That's my position on that one.

1 With respect to 16, 17, and 18, that's just asking
2 for revenue that is unrelated in any regard to scope of use.
3 That's what they say. That's what the requests say.

4 THE COURT: Yeah, they do say that. I agree with
5 you. But they're saying this is discovery, I get to see
6 that, and I'll determine -- my experts will help me
7 determine what, if any, relevance the scope of use of the
8 variation between the scope of use has in terms of its
9 impact on the value of the licensure saying that we took
10 from you. So, I mean, I guess --

11 MR. HINDERAKER: I think we've had the discussion,
12 Your Honor, is --

13 THE COURT: Okay.

14 MR. HINDERAKER: -- is the document request that
15 has no regard for comparability an appropriate document
16 request that covers 12 years for a damage claim that arises
17 in 2016.

18 THE COURT: Okay. Understood.

19 Anything further for the defendant on either 16
20 through 18 or 19?

21 MR. DATZOV: We've taken a lot of the Court's time
22 on it and just a couple of very quick points on it.

23 With regard to us not allegedly narrowing the
24 discovery, we're asking only for revenues and licenses for
25 the very specific copyrighted works that are asserted in

1 this action. We're not even going outside of that bounds.

2 With regard to comparability, I think Your Honor
3 hit it right on the head. That's an argument they can make
4 to the factfinder and a battle of the experts will go on I'm
5 sure for a long time about it.

6 With regard to Rule 1 and proportionality, because
7 that was touched on, I recognize that 1,200 documents might
8 sound like a lot on this issue, but it's a critical issue
9 for us, and I wanted to let the Court know that thus far, by
10 my numbers at least, we've been producing -- we've produced
11 more than 9,300 documents and 39,000 pages. By comparison,
12 FICO has produced 1,297 documents. So I don't think asking
13 them to produce another 1,500, 2,000 documents on what is,
14 from our view, one of the most critical issues in this case
15 is overly burdensome, not just burdensome.

16 THE COURT: All right. One last thing on the
17 license agreements themselves. Setting aside what, if any,
18 relationship they have to damages, tell me how they're
19 otherwise relevant.

20 MR. DATZOV: On the licensing revenues, Your
21 Honor?

22 THE COURT: On the licensing agreements, the one
23 -- all licensing agreements, 2006 to the present.

24 MR. DATZOV: Sure. Well, I think probably one of
25 the biggest reasons why they're relevant is the damages

1 piece. We need to understand how those licensing agreements
2 were structured. And I imagine that the licensing
3 agreements themselves will have the prices in the license
4 agreement, like ours did. So I don't know how there's an
5 easy way to separate that information. But beyond just the
6 amount of money that people were paying for the license,
7 whatever the license was, and we need to understand that
8 context, too, the provisions that are in some of those
9 licensing agreements are relevant to the other very critical
10 issue in this case, which is the interpretation of the
11 disputed terms provision. As of right now, I specifically
12 know of 10.8 and 3.1. I don't know that there might be
13 other arguments on it. But, for example, with 10.8, the
14 argument for the -- or, I'm sorry, the assertion for the
15 claim thus far for the breach of that provision has been to
16 say you had a corporate event that happened to not the party
17 in the license, but somebody else up the corporate chain,
18 which now, from our standpoint, completely wipes out your
19 license no matter how you are using it anymore. And Judge
20 Wright found that provision ambiguous.

21 So one of the things that we've alleged in our
22 counterclaims is that they denied their consent for our
23 continued use of the license in bad faith. They didn't
24 provide a reason for that. And that's not a fight the Court
25 needs to decide today. But part of the question is, how are

1 you enforcing that provision? What is your view of what
2 that provision means, not just with respect to us, but with
3 respect to other parties?

4 So if there are 1,250 other agreements with
5 some -- I imagine at least some large corporations, and I
6 cannot imagine that in that thousand plus corporations list
7 that not one of them underwent a similar corporate change,
8 if they haven't enforced that provision, even though they
9 have underwent a change, that is relevant to proving what
10 their intention was, not just of what the license means, but
11 how they're going to enforce it. And that's information we
12 should be able to present to the factfinder, because -- FICO
13 can correct me if I'm wrong -- I don't believe they've
14 produced any attempts to enforce a similar provision to us
15 thus far.

16 THE COURT: And you need the agreements to know
17 which, if any, have a similar provision?

18 MR. DATZOV: Yes. I mean, there's no way for us
19 to specifically ask for an agreement that has the same
20 provision. There's going to be some judgment in there of
21 how close are the provisions. And so I think particularly
22 in light of the fact that the money piece is already going
23 to be part of those agreements, which, from our standpoint,
24 is highly relevant, I think probably, Your Honor, it would
25 be more difficult to actually parse out agreements that are

1 not responsive to money and are not responsive to a
2 non-assignment provision than it would be just to give us
3 that information.

4 THE COURT: Okay. Yes, sir.

5 MR. HINDERAKER: Yes. Thank you.

6 It's interesting to listen to the arguments as the
7 requests try to be rewritten right here before Your Honor.
8 The document request is all licensing agreements. Let's
9 assume a licensing agreement has a provision that's like
10 10.8 or exactly like 10.8. That tells us absolutely nothing
11 about whether that provision has ever been enforced.

12 Federal has asked us in different discovery
13 requests for the actions that we are aware of where we have
14 enforced copyright rights with respect to Blaze Advisor, and
15 we have identified all of those lawsuits for them.

16 Now, I'm dealing with a document request, all
17 license agreements, I'm told that's relevant to enforcement
18 and we all know that having the document in front of us
19 doesn't tell us anything about enforcement, and we know that
20 FICO has given Federal every lawsuit or every enforcement
21 action that it's aware of.

22 Now, could it be, Your Honor, that the business
23 people in some other license agreement had an assignment
24 situation and they worked it out and there was no dispute
25 about it, there was nothing to enforce, the parties just

1 complied with the agreement? Now, I don't know that that's
2 the case, and I don't know it's not the case. I just know I
3 can't tell you that from producing more than 1,200 documents
4 that are the license agreements.

5 Then the other point -- the other argument that's
6 made is that it relates to some of the parole evidence or
7 could be parole evidence for disputed terms in the contract.
8 These agreements were -- there's a main agreement and two
9 amendments, and they were all signed between June and
10 December of 2006. The issue on parole evidence is the
11 meeting of the minds between FICO and Federal, which will
12 come out in terms of the documents that were exchanged
13 between those parties and the testimony of the
14 representatives.

15 Rather than ask for any situation that might be
16 contemporaneous in time when these agreements were entered
17 into, we have a document request that spans 12 years, and
18 now you get 12 years' worth of documents and you have
19 provisions that are like or the same as 10.8. That's what
20 the document request asks for. That tells you nothing about
21 the meeting of the minds between FICO and Federal. It tells
22 you there's another contract that has the same words in it
23 as this one does. But it doesn't say anything about the
24 meeting of the minds and what the parties intended that
25 provision to mean in this contract. It's just fishing in

1 the dark for something that doesn't bear on the case.

2 THE COURT: Okay. Last word.

3 MR. DATZOV: As an example, Your Honor, if there
4 is a 2011 licensing agreement that has the exact same 10.8
5 with, let's say, Intel or somebody else and Intel had the
6 same corporate merger -- same structure corporate merger
7 that our client did and they did nothing and just let them
8 keep going with it, I think that evidence is probative of
9 what the intent of the parties were or at least the meaning
10 of the provision in this case is.

11 THE COURT: Well, and the other way it might be --
12 you might have a provision -- I don't know the facts and the
13 language of your agreements, obviously, as well as you do,
14 but there may be a provision relating to change of control
15 that is differently worded, which you would argue is
16 relevant to, well, what's the meaning of this? It uses
17 different language. Previously they used this language to
18 indicate change of control. I mean, I don't -- there's a
19 number of ways in which that might be -- end up being
20 relevant and probative that we don't know because we haven't
21 seen the language.

22 MR. DATZOV: I completely agree, Your Honor.

23 THE COURT: Okay. Okay. Let's go to Request No.
24 13. I'm sorry, this is -- geez, when Jeff Keyes did this,
25 it moved much quicker.

1 All agreements relating to the works you contend
2 Federal infringed. I, frankly, am not sure how that's
3 different from Request 19. The only -- in my mind the only
4 potential way that's different is if you mean the agreements
5 at issue in this lawsuit, which they say they've produced.
6 But am I misreading this?

7 MR. DATZOV: You're not, Your Honor. Actually,
8 your reading -- initial reading of it that it's similar to
9 19 is spot on.

10 THE COURT: How is it different from 19, other
11 than 19 is narrower if it contains a 2006 date limit?

12 MR. DATZOV: So it's narrower in that way. It's
13 also narrower, I think, in the sense of it's asking
14 specifically as what might be characterized as licensing
15 agreement. Again, I think this is pretty typical. I don't
16 want to mince words of what they might characterize as a
17 license or non-license agreement that relates to the
18 copyrighted works. But what I think is clear from 13 is
19 that what we're asking for are agreements related to the
20 copyrights issue. We're not asking for agreements that were
21 breached or allegedly breached by one of the parties in this
22 case.

23 So they're talking about the same subject matter.
24 They're just phrased differently. One is a bit broader
25 because I think even agreements that relate to licensing

1 agreements could be relevant.

2 THE COURT: But this would include, also, if there
3 were a contract with a -- you know, some sort of outside
4 software vendor to help create the Blaze Advisor software,
5 this would sweep that within its ambit if it relates to
6 that. And that's not relevant. Right?

7 MR. DATZOV: I think there could be outer bounds
8 of that that probably stretch beyond what we're even looking
9 for, Your Honor. But up until now, we haven't really had
10 the opportunity to discuss this issue because the position
11 that was in place during our meet and confers was we're not
12 giving licensing agreements and we're not giving license
13 revenues period.

14 THE COURT: Okay. Mr. Hinderaker, what further do
15 I need about number 13?

16 MR. HINDERAKER: Only that I'm astounded if number
17 13 is interpreted to read every document of FICO that
18 relates to Blaze Advisor or every agreement of FICO that
19 relates to Blaze Advisor.

20 THE COURT: That's how it -- that's how it reads
21 to me.

22 MR. HINDERAKER: I read it as every agreement that
23 we contend Federal infringed relating to Blaze Advisor.

24 THE COURT: Okay. All right.

25 Let's turn to the Interrogatories 6 through 9.

1 And maybe I can short-circuit this one. You've seen the
2 information that has been provided by the plaintiff in the
3 briefing related to the calculation of those categories of
4 damage, correct?

5 MR. DATZOV: Yes, Your Honor.

6 THE COURT: Does that information satisfy what you
7 were seeking to compel in this?

8 MR. DATZOV: It does with a couple of qualifiers.
9 One, the wrong number 6 or the response to Interrogatory No.
10 6, we would like at least some explanation for the basis of
11 why they're applying a per application license model, rather
12 than an enterprise-wide license model. If that's provided,
13 I think we're at a sufficient point that we don't need to
14 bother the Court anymore.

15 With regard to Interrogatories No. 7 and 9, we do
16 need a response to those, because at this point we don't
17 have any. They have just said we've already answered that.
18 And I think what Mr. Hinderaker said today is, no, we're not
19 using lost licensing to determine our copyright damages,
20 which is specifically what Interrogatory No. 9 is asking:
21 How are you calculating your actual damage under the
22 copyright law? So if they're not using the damages theory
23 they have told us about, how are they doing it? Those
24 requests aren't cumulative. They're asking for a response
25 under the damages for each claim. And if the response is

1 it's category one damages for this claim and we've already
2 told you what they are, then that's fine. They can just say
3 category one damages, copy paste whatever category one
4 damages response was. But we still -- we're still entitled
5 to know what their position is.

6 This suggestion from the briefing that, well,
7 we've given you documents, you ought to be able to figure it
8 out, that's improper. I mean, we don't need to take
9 educated guesses, no matter how good they are with what
10 their positions are. It's easy enough. Just tell us we're
11 seeking category one damages or copyright breach or whatever
12 it might be.

13 MR. HINDERAKER: I think this is kind of reducing
14 itself to silliness if you want my honest opinion. The
15 Interrogatory No. 6 is describe and quantify each element of
16 damage, and so we describe and quantify the damages that
17 arise from -- that arise from the period of time after the
18 contract is terminated.

19 Then we're told that the software, Blaze Advisor,
20 has been used by entities that were not the client in the
21 U.K. and Canada. We don't know when that began, but we
22 provide them the damages on an application basis for that
23 breach and for that breach -- the breach being a 3.1, the
24 unauthorized disclosure. We don't know when the damages
25 period began because we haven't been benefited by Federal's

1 discovery responses to tell us when they started to do that.
2 But that's that category of damages.

3 If within Federal or within -- if within Federal
4 there is any other entity or division that is not the Chubb
5 & Son being the client, and if Blaze Advisor is used with
6 respect to that, that would be an item of damage, but we
7 haven't had discovery on it.

8 So the notion that you can't read our response to
9 Interrogatory No. 6 and when -- and in response to 7 and 8
10 we refer back to 6 by reference, we should cut and paste the
11 same words into the response, I just find to be rather
12 silly.

13 Then with respect to Interrogatory No. 9, describe
14 and quantify damages based upon copyright infringement, boy,
15 Your Honor, that's why we're here on our own motion to
16 compel, so that we can get the information necessary to be
17 able to tell after expert work, tell Federal the claim that
18 we have for disgorgement of damages under the Copyright Act.
19 We just simply can't -- we're not going to make it up out of
20 thin air, and we don't have the information to answer number
21 9.

22 THE COURT: Okay. Anything further?

23 MR. DATZOV: On number 9, Your Honor, I'm very
24 well aware that they're seeking profits under copyright.
25 What I don't know is are they seeking actual damages? I

1 think they are because that's what they've alleged in their
2 complaint, but I don't know how they're calculating that or
3 on what basis they're seeking it.

4 MR. HINDERAKER: You should read the interrogatory
5 answer to number 6, and then you would find out that the
6 license fee -- I'm sorry, you would find out that the
7 disgorgement of damages claim is directed against Federal
8 and any entity -- trying to say -- is directed against
9 Federal, the defendant.

10 Then on the -- with respect to the U.K. and
11 Canada, for example, where Federal without authorization
12 distributed our software to those entities, you should read
13 the interrogatory answer and you'll realize that we are
14 seeking lost license fees, the fees we would have had but
15 for that breach, and the disclosure, and the use by Canada
16 and the U.K. If you read the interrogatory answer, we're
17 not asking for disgorgement of profits from U.K. and Canada
18 separately from what might be within the profit stream of
19 Federal.

20 Now, if all of those entities roll up into
21 Federal's revenue stream, that would be a different -- then
22 we would have a different conversation. But we don't know
23 that yet because we can't get discovery from Federal on the
24 revenue streams. But the disgorgement of damages copyright
25 claim is as I describe and as described in the interrogatory

1 answer.

2 THE COURT: So if I'm understanding it right, what
3 you're saying is that in answer to Mr. Datzov's question,
4 FICO is seeking actual damages, as well as disgorgement with
5 respect to that use, and that the actual damages are
6 described as the value of the licenses that were being used.
7 No?

8 MR. HINDERAKER: See, I just simply don't know --
9 because I haven't had the discovery, I don't know the facts
10 sufficiently. In terms of the revenue streams, the reason
11 -- my only -- one thing I want to qualify, Your Honor, is
12 that with Federal being the defendant and our entitlement to
13 the -- we'll go through the act in a minute -- our
14 entitlement to at-the-end-of-the-day profits from the
15 defendant, the disgorgement claim is limited to Federal.

16 Now, how many improper uses by Federal that roll
17 up into Federal's revenue are there? I know that there's
18 the post-termination use by Chubb & Son. Has Federal
19 distributed the software to other divisions within Federal?
20 Has Federal distributed the software to other subsidiaries
21 of Federal whose revenue rolls up into Federal? I don't
22 know.

23 We have unauthorized use in Canada and the U.K.
24 for sure. Do those entities -- is their revenue -- the
25 revenue -- if their revenue does not roll up into Federal,

1 well, then I don't have a claim against a U.K. entity or a
2 Canadian entity. And I'm not seeking disgorgement of
3 profits from an entity that's not a defendant.

4 THE COURT: Right.

5 MR. HINDERAKER: So with respect to the defendant,
6 Federal, I do believe and the allegations are that the
7 distribution to those other Chubb entities, Canada and the
8 U.K., was unauthorized and was FICO damaged? It was damaged
9 by way of the license fees it could have had if it had
10 negotiated an honest license with those people. But save
11 and except for some facts that I'm not aware of how that
12 U.K. or Canada revenue rolls up into Federal, I don't think
13 I can get at revenue that isn't in the defendant's bucket.
14 So that's the only qualification I have. And I wish I could
15 give you a clear answer, but I haven't been able to get
16 documents.

17 THE COURT: Okay. All right. I think I'm with
18 you all on that one.

19 All right. Is there anything further on the
20 defendant's motion to compel, either side? Mr. Datzov?

21 MR. DATZOV: Yeah, Your Honor, I think there is
22 just one little piece left of that.

23 So the fourth request that we had made in our
24 motion was for the production of any documents that were
25 improperly redacted based on relevance or anything else

1 other than privilege or work product. Now, they've agreed
2 to produce the two exemplar documents we provided for that
3 issue, but they remain silent on whether they're going to
4 produce, or reproduce, any documents that exist that were
5 also redacted based on relevance that are outside of just
6 those two exemplar documents. And I can tell Your Honor
7 that from reviewing the production, there are quite a few
8 other documents that, you know, have random Excel rows
9 redacted and things like that. I don't know the basis for
10 the redaction, but my guess is that on at least some of them
11 it was based on relevance again. And so I would ask that to
12 the extent there are any other documents that were redacted
13 based on relevance or anything else other than privilege,
14 that those also be produced without redactions.

15 THE COURT: Mr. Hinderaker.

16 MR. HINDERAKER: The documents that we were aware
17 of -- made aware of by Federal not only did we agree to
18 produce them, they have been produced. That's a fact.
19 Because we agree that the redaction -- we don't try to
20 defend that redaction. It was an oversight. And other
21 redactions will be on the privilege log and the statement as
22 to why, you know, for privilege. And if something comes to
23 our attention where we say, oops, the same mistake was made
24 by, you know, that's not -- I'm responsible for everything,
25 but the same mistake was made, we'll fix it. But we will --

1 just as I only can deal with the requests as they're
2 drafted, I only can deal with the complaint -- with the
3 objections as they're presented, and that has been remedied.

4 THE COURT: Okay.

5 MR. DATZOV: Your Honor, I don't think it would
6 have been fruitful for us to submit tens or hundreds of
7 documents to the Court on that point. And I don't think it
8 should be our responsibility to go through and guess on
9 whether they have improperly redacted something. And I
10 think waiting until the end of a privilege log to see a
11 bunch of redactions that say relevance is probably not
12 worthwhile either.

13 MR. HINDERAKER: I think we're arguing about a
14 non-argument, Judge. There's no dispute.

15 THE COURT: Yeah. I don't know if we're arguing
16 about a non-argument or not, but on this one I can easily
17 give you both guidance on this. Can't redact for relevance.
18 If there are items that are redacted for relevance, the
19 documents have to be reproduced unredacted. If there are
20 documents that are redacted for privilege, then a privilege
21 log has to be provided for those redactions. And --

22 MR. HINDERAKER: There's no disagreement, Your
23 Honor.

24 THE COURT: Okay. Okay. Let's turn briefly --
25 and, again, I don't want to shortchange you, but let's turn

1 briefly to the plaintiff's motion to compel items -- the
2 RFPs 30 through 32, which essentially call for summary
3 reports of gross and net revenues and gross and net profits
4 from different defined entities. Mr. Hinderaker.

5 MR. HINDERAKER: Your Honor, I think it would be
6 helpful to my discussion of requests, those requests 30 to
7 32, if I could have a minute or two just to talk about Blaze
8 Advisor and the license agreement to set up the context.

9 THE COURT: Okay.

10 MR. HINDERAKER: So Blaze Advisor is the software
11 product that's licensed, and it is -- it's a rules
12 management. It's a rules management software tool. It's a
13 rules engine, if you will. And if I can use the original
14 agreement where Chubb, the licensee, licensed for one
15 application. So originally they licensed for one
16 application, and they called it CSI Express, and that is
17 Chubb's specialty insurance underwriting and automated
18 policy renewal business application.

19 So Blaze Advisor is the foundation for the rules
20 to be inputted so that insurance policies can be
21 automatically renewed. And when insurance policies are
22 automatically renewed, there are more renewals, and when
23 there are more renewals, there's more revenue.

24 So then at the end of the -- at the time of
25 termination through discovery, we're told that Federal --

1 that is, Chubb -- has used Blaze Advisor to implement or on
2 15 different business applications. So, for example, one of
3 those applications is to use rules to identify cross-selling
4 opportunities. Blaze Advisor enables that rule-based
5 application. The cross-selling opportunities then create
6 the opportunity for additional revenue on the cross-selling.
7 So that's what Blaze Advisor is in a nutshell.

8 The license agreement is with Chubb & Son, a
9 division of Federal. And as you know from Exhibit 1 of the
10 declaration that we provided from Mike Erbele, Chubb & Son,
11 a division, is a manager of many -- or several, by the 10(k)
12 U.S. subsidiaries in the property and casualty group, and it
13 also is -- provides services for other insurance companies
14 within the property and casualty group. And the property
15 and casualty group has three lines of business: personal,
16 commercial, specialty. So those are sort of the background
17 facts that inform us regarding the document requests.

18 So when we get to the document requests, I think
19 it's important to the argument -- maybe I'll put it this
20 way: I think it belies the argument of Federal if we look
21 at what the document request actually asks for. So it's
22 summary reports, revenue and profits. And with respect to
23 number 3, revenues and profits derived from the products and
24 services, so insurance and services. Baseline of business
25 of Chubb & Son, a division --

1 THE COURT: Right.

2 MR. HINDERAKER: -- that used Blaze Advisor.

3 THE COURT: Right.

4 MR. HINDERAKER: So that's the client under the
5 license agreement. There will be post-termination issues.
6 And it's for products and services for which Blaze Advisor
7 has used.

8 31, again, revenue, profits, products and
9 services. And now we're trying to get at what came from
10 products and services for any division or entity other than
11 Chubb & Son. So get the rest of it.

12 And then on 32 it's to look at the whole picture
13 for the lines of business of Chubb & Son, plus any other
14 division of Federal or entity that Federal has distributed
15 that uses Blaze Advisor, what's the profits and revenues by
16 line of business.

17 So we get to look at the whole, and we get to look
18 at the two separate parts in 30 and 31. And the reason for
19 saying this, Your Honor, is that by no stretch are we trying
20 to be overbroad and ask for revenue. I don't want the
21 revenue of Federal. That might be huge. But the revenue
22 that is related to the use of Blaze Advisor, that's what
23 these requests are asking for.

24 Now, if I might just refresh the Court with regard
25 to the Copyright Act itself, Section 517 U.S.C. 504,

1 speaking of disgorgement. The copyright owner is required
2 to present proof only of the infringer's gross revenue.
3 These requests are seeking a quantification. And in the
4 briefs, as you know, we've had -- there is an argument with
5 regard to this concept of reasonably related. And I'd like
6 to discuss that because it has two different contexts.

7 One context is the way I just described, that we
8 want the revenue that's reasonably related to the use of
9 Blaze Advisor. I don't want to overreach. I don't want
10 other revenue. I just want Blaze Advisor-connected revenue.
11 I want a number. And my burden under the statute is to give
12 the jury the gross number. Defendant has a lot of other
13 burdens, but I want to meet my burden.

14 Now, the defendant's argument -- well, let me back
15 up. And so in opposition, Federal has cited cases where
16 somebody asked for a tax return. And, you know, you don't
17 get a tax return. Why? Because it's not related to the use
18 of the infringing. So that case doesn't -- I don't disagree
19 with that case, but it doesn't tell us anything about this
20 situation.

21 Another case, I think it was Judge Magnuson's
22 case, the revenue related to the use of the infringing work
23 was already produced. What wasn't produced was revenue
24 unrelated to the infringing work. And we're not asking for
25 that.

1 And then another case that they cite is one where
2 there was partial summary judgment of no liability. Well,
3 we're not asking for that. That's not our situation either.
4 So we're trying to be quite precise in just getting a
5 quantity.

6 Now, the other way in which reasonably related is
7 used by Federal is to suggest that in this discovery motion
8 the sufficiency of the evidence of demonstrating that Blaze
9 Advisor has -- makes some contribution to the revenue stream
10 has any bearing at all on this. And I submit, Your Honor,
11 that come trial we will have a burden of showing that,
12 ladies and gentlemen, here's the quantity of revenue.
13 That's this discovery today. And then there will be another
14 set of proofs. And, ladies and gentlemen, Blaze Advisor
15 software contributes to the ability of -- contributes to
16 that revenue stream, and then that will be that proof.

17 Now, as you know from a footnote in our brief,
18 FICO has a second set of discovery out. The document
19 requests are for all of the business reasons that --
20 documents that relate to the business reasons that Federal
21 implemented each of the applications. Why am I asking that?
22 I want to get the discovery that relates to the contribution
23 of the software to revenue. We want to get CSI Express in
24 place to enhance revenue. Now, Federal's response to those
25 is no, you don't get any of it for the same reasons they say

1 here.

2 So I'm here today defending a motion to just get
3 revenue numbers based upon a proposition that I haven't
4 proved the nexus, the contribution of software to revenue,
5 and then on second request I'm denied that as well. This is
6 what in the old days we just call a stonewall.

7 So I submit, Your Honor, that all of the cases
8 that arise out of summary judgment context -- post-trial
9 appeals, motions in limine, every situation where the
10 sufficiency of the evidence of that nexus is at issue -- has
11 nothing to do with us today.

12 They also cite some other cases where the
13 disgorgement simply wasn't a remedy as a matter of law, and
14 that's not our situation because Section 504 says otherwise.

15 So what we did in our memorandum was to be -- try
16 to make the Court comfortable with the fact that our theory
17 that Blaze Advisor software contributes to the revenue, you
18 know, it's plausible. There's a reality to it. When
19 Federal's own documents say when they implement an
20 automatic, automated renewal processing at one of the auto
21 portals, Alberto Auto, revenue increased 15 fold over four
22 years, that's a fight for another day at trial or summary
23 judgment, but it is the context in which these document
24 requests simply seek the quantification of the revenue are
25 relevant.

1 I guess I have other notes here that go through
2 the various facts that have already been disclosed in
3 discovery regarding the contribution to revenue from the
4 various named applications, and there's no need to do that
5 at the moment. I only want to point out that Federal's
6 response to our brief simply ignores all of that and says,
7 well, Blaze Advisor only enhances efficiencies, therefore,
8 there's no contribution to revenue -- less cost, but same
9 revenue. Well, it's a convenient argument to make because
10 it fits in with some of their case law, but it's not the
11 facts of the matter that we're arguing about. And I have no
12 doubt that Blaze Advisor also produces efficiencies, but in
13 addition to efficiencies, as I've said, and that will be our
14 proof for another day, it enhances the revenue.

15 So 30, 31, and 32, Your Honor, are clearly
16 relevant to our disgorgement plan. We need to know the
17 quantities. And then we included the profits as well
18 because under the statute Federal will have the burden of
19 saying, well, you're only entitled to a portion of the
20 profits so these are the profits that are derived from the
21 revenue, and we want to know their information with respect
22 to that, as well.

23 THE COURT: Do I understand you correctly to say
24 that if they provide documents that respond to 30 and they
25 provide documents that respond to 31, that they have

1 necessarily provided the documents that respond to 32,
2 unless there is some sort of separate documents that
3 aggregate those things?

4 MR. HINDERAKER: In theory, I can see that that's
5 true, and that's why 32 was drafted as it was in the sense
6 of, you know -- the phrasing, you know, without regard to 30
7 or 31 we want. So when 32 says for the lines of business
8 that use Blaze Advisor total revenue and I think -- but I'm
9 asking that as a check against 30 and 31. Maybe it's going
10 to be the same number. But if it's not the same number, I
11 need to know why.

12 THE COURT: Okay.

13 MR. HINDERAKER: And I can find that out in
14 discovery, but first I have to know if it's a different
15 number.

16 THE COURT: As it turns out, these motions are all
17 about discovery. So, all right, Mr. Datzov.

18 MR. DATZOV: I think I know.

19 THE COURT: Go ahead on 30 to 32.

20 MR. DATZOV: Sure. Your Honor --

21 THE COURT: Briefly, by the way. Okay? It is my
22 intention -- I'll let you know right now -- when we're done,
23 I'm going to take a break. It's my intention to give you my
24 ruling today, because I think it helps parties to know and
25 not get bogged down in discovery orders that take two,

1 three, four months to get out, so just so you know.

2 MR. DATZOV: Understood, Your Honor.

3 THE COURT: Okay.

4 MR. DATZOV: Let me pick up where Mr. Hinderaker
5 left off. And when we're looking at the causal connection
6 and we're thinking about what is Blaze Advisor, the one
7 thing I want to make sure was clear is Blaze Advisor itself
8 is not an automated underwriting software program. It is a
9 very tiny component of those applications. And for an
10 example of that, Your Honor, I would point to Docket No. 64,
11 which is an exhibit FICO submitted. It's Exhibit 7, at page
12 22. And, Your Honor, I have a Computer Science degree, and
13 that's enough to recognize that this bores a lot of people,
14 so I don't want to go into too much detail, but what you're
15 looking at there is a diagram of the evolution. That's the
16 application that Chubb was using for this particular
17 insurance line. And it's saying current state. And there's
18 a whole lot of boxes there about different functionalities
19 that work.

20 Now, Blaze Advisor at the bottom -- well, not at
21 the bottom, I don't know that it's noted actually in the
22 diagram -- but the rules management component of that entire
23 application is a very tiny component of how that process is
24 actually done.

25 And the other point about that is if you look at

1 about halfway down on the page, there's a line that says,
2 Build could mean our IT developers code it or it could mean
3 by AG Blaze rules. And what that's saying is that when
4 you're thinking about these rules, you can either put them
5 right in the software, you can have a program that says if
6 so and so, then this is what we do, or you can make them
7 external and allow the software to reference those rules.
8 That's what Blaze Advisor is doing.

9 Now, with regard to what's being sought here,
10 there's a couple of points I just want to make. First of
11 all, the requests are not looking to establish the causal
12 connection that's at issue. They're looking to quantify
13 something that they already assume there has been
14 established a causal connection for. They're saying what
15 are your numbers for these revenues? And our position is
16 they're zero and there are no documents that show
17 attribution of Blaze Advisor software that we're aware of
18 because that's not something we believe exists.

19 With regard to the standard, Mr. Hinderaker kept
20 saying reasonably related. We pointed out in a footnote
21 that Eighth Circuit law is much different. It's causal
22 connection here. And that is also the standard in many
23 other circuits. The reasonably related language comes from
24 a Sixth Circuit case, which doesn't apply to the Court here.
25 So the standard is causal connection, not reasonably

1 related. I'm not sure it matters because they can't satisfy
2 reasonably related either, but I do want to point that out.

3 Now, the two parts that we mostly disagree on this
4 motion -- I think everybody is on the same page of what the
5 copyright law and the Copyright Act requires and how those
6 burdens are going to play out at trial, if we ever got
7 there. But the parts where we disagree are, one, do they
8 need to show such a causal connection at the discovery stage
9 and, two, if so, have they met that burden?

10 With regard to the first question, FICO is mixing
11 up the cases we're relying on. We're not relying on the
12 *Bell v. Taylor* case, which is the tax revenue -- the tax
13 submission case for the idea that there is a causal
14 connection. There is not a causal connection here. The
15 *Bell v. Taylor* case and the *Lucky Break* case from this
16 court, which was a Judge Graham decision on discovery, go to
17 the question of whether you should even look at a causal
18 connection at the discovery stage when parties are seeking
19 copyrighted profits, and the answer to that is yes, you
20 should. That's exactly what the Seventh Circuit affirmed
21 on, and that's what Judge Graham determined was lacking in
22 the *Lucky Break* case.

23 So I think the answer to that first issue is yes,
24 the Court does need to address whether the revenues that are
25 being sought have a causal connection to the alleged

1 infringement in this case, which is use of copyrighted
2 software or allegedly copyrighted software.

3 Now, for the second part of that, the question of
4 whether there is, in fact, a causal connection in this case,
5 again, I would point out we're looking at Blaze Advisor not
6 under automated underwriting software. But the bigger point
7 here is that the cases that have looked at this very
8 specific issue have all consistently held and said no, if
9 you are using -- merely using software behind the scenes,
10 then that doesn't have a sufficient enough causal connection
11 to the alleged infringement. Those are speculative damages,
12 which irrespective of what the copyright law or the
13 Copyright Act provides, are not recoverable. That's the *IBM*
14 case that we cited to the Court. That's the *Complex Systems*
15 case that we cited to the Court. And that's the *Point 4*
16 *Data* case that we cited to the Court. All of those are on
17 point, and they hold -- in fact, I think it was the *Complex*
18 *Systems* case where there were transactions being processed
19 by the very copyright software that was at issue, exactly
20 the argument that's being made here. And the court said in
21 denying that there was a causal connection -- or rejecting
22 that argument the court said, the mere connection or usage
23 -- I'm bracketing here -- of the software alone is
24 insufficient.

25 So the idea that they can just come in and say,

1 well, your business was using software behind the scenes so,
2 therefore, we get to go after revenues of departments or
3 lines of business or whatever they might have, merely
4 because they use the software doesn't find support as a
5 matter of law. That's an issue that does need to be
6 addressed because that goes to a question of a causal
7 connection. And I don't think they can show that causal
8 connection at this point. They're not able to show anything
9 beyond the mere use of the software behind the scenes.

10 So, you know, when we're thinking about what kind
11 of damages have been recoverable, the first category under
12 copyright law are the direct profits. Those are where the
13 copyrighted work is part of the product that's being sold.
14 That's not at issue here.

15 The second type of damages that are often asked
16 for are damages where the copyrighted work is a part of the
17 advertising, it's used to actually solicit and make the
18 sales. Those are the advertising cases, like the *Andreas*
19 case. That's not what we have here either. There's no
20 evidence that FICO -- or, I'm sorry, that Federal was using
21 Blaze to tout its business and to make sales.

22 What we have here is this third bucket of damages,
23 which is they used it behind the scenes, and that's what
24 *IBM*, *Complex Systems*, and *Point 4 Data* all address and say,
25 no, you're not entitled to those kinds of damages.

1 MR. HINDERAKER: May I respond?

2 THE COURT: Please.

3 MR. HINDERAKER: Thank you.

4 I submit that there was -- well, let me respond.
5 There are a number of points, Your Honor, that deserve just
6 to be teased out.

7 I guess the one place to start is with respect to
8 the allocations of burden of proof under the Copyright Act
9 and the concept of attribution. And for guidance I would
10 direct the Court to the Eighth Circuit's *Andreas* decision.
11 And, as you will recall, the district-court judge in *Andreas*
12 got attribution confused and overturned the jury verdict
13 because it was too speculative in his or her mind that the
14 plaintiff proved the extent of the profits from the
15 infringement. The Eighth Circuit said you're mixing up
16 burdens of proof. Attribution, how much profit is
17 attributable to the infringement, is not the plaintiff's
18 burden, it's the defendant's burden. So when counsel argues
19 about attribution, it's an issue for the defendant to
20 address at trial.

21 The *Andreas* case is then used by counsel to assert
22 that the proof standard at trial is causal connection. That
23 will not be found in the *Andreas* decision. The words of the
24 *Andreas* decision is that the infringement contributed to the
25 revenue. And so the advertisement for the TT Coupe, that

1 included infringing material, was found by the jury under
2 circumstantial evidence to contribute to the revenue. And
3 then it was for Audi to present the proof of how much was
4 attributable from that, from that infringement.

5 Now, the decision then was kicked back to the
6 district court because the jury -- not only did the jury
7 award profits based upon the sales of the TT Coupe for which
8 the advertisement was directed, but it awarded profits for
9 other product -- for other cars as well. And so the Eighth
10 Circuit said no, no, no, you have to be limited to the
11 infringing work, revenue from the TT Coupe. Our document
12 requests are revenue from use of Blaze Advisor.

13 Now, the trial -- you know, the argument at trial
14 that Blaze Advisor is a back-office operation that never
15 sees the light of day, well, let's have that argument at
16 trial, because I do carry the burden on behalf of FICO of
17 showing that there is contribution to revenue from -- and,
18 by the way, the *Balsley* decision from the Sixth Circuit that
19 used reasonably related was interpreting *Andreas*. The
20 defendant's objection to our discovery saying, well, you get
21 nothing using the phrase reasonably related because that
22 comes out of the *Francois* case that they rely upon. So this
23 notion that reasonably related to and contributed to are
24 different things has its own issues.

25 But let's go back to this notion that Blaze

1 Advisor is back office. Well, that's the efficiency
2 argument. I have to prove more than that. I have to prove
3 a contribution to revenue. I'm going to be doing that at
4 trial. But in the discovery today I get numbers. I get
5 quantification of revenue. But we might look at one of
6 their applications and we might look at one of Federal's
7 documents that says, with decision point the producer can
8 obtain real-time quotes and a bindable quote letter
9 enhancing producer productivity. The same decision point
10 application is described as a market-facing web quote.

11 MR. DATZOV: Do we have an exhibit number, Your
12 Honor, where we're reading from so I can look at it as well?

13 MR. HINDERAKER: Federal document 252-0006.

14 And then they say the real-time bindable quote
15 letter includes helpful marketing information, completed
16 application ready for client's signature, not an indication
17 that other carriers provide Federal document 252-0006. My
18 point being, Your Honor, that let's argue at trial the
19 contribution to revenue. But to have the representation to
20 you that this is a hundred percent back office doesn't even
21 bear out under Federal's own documents.

22 And that *Lucky Break* case, of course, I mentioned
23 before for those revenues that were related to Blaze
24 Advisor, to use the analogy, those revenues were produced.
25 In this case, we're not asking for revenues that are not

1 related to Blaze Advisor, and so that element of *Lucky Break*
2 while right, *Lucky Break* has no relevance to us.

3 So, Your Honor, there are 15 business applications
4 that exist because of Blaze Advisor. Counsel looked at one
5 of them, Evolution, at a certain document and stage of the
6 evolution of Evolution. And I'm sure that when we come to
7 trial, you know, some applications are going to be not
8 contributing to revenue and some applications are. And then
9 in terms of the attribution to the infringement, that's
10 going to be Federal's problem.

11 THE COURT: Very briefly.

12 MR. DATZOV: Very briefly, Your Honor.

13 I just want to make it clear we're not having a
14 fight about attribution and the issue that's in front of the
15 *Andreas* case. What we're saying is that before you ask for
16 revenues, you have to say what the revenue is relating to,
17 and that's certainly consistent with *Andreas*. It's
18 consistent with other cases. You don't get to just say and
19 we get your revenues. We're not fighting, right now at
20 least, about the issue of how much of those revenues is
21 attributable to what. We're saying that at the very outset,
22 you need to provide some causal connection between the
23 revenues you're seeking, and ultimately we'll try to prove,
24 and the alleged infringement.

25 Now, with regard to *Andreas*, I do want to mention

1 and point to the Court on page 797, and I'm quoting, "But we
2 reject the notion that *Andreas* was required to put a TT
3 buyer on the stand to testify that she bought the car
4 because of the commercial in order to meet his burden of a
5 causal connection." I don't know how much more clearly that
6 can come out. The standard under Eighth Circuit law is
7 causal connection, not reasonable relationship. Now, we can
8 fight about later what that means, but that's the standard.

9 THE COURT: Yeah, I understand. But in fairness
10 to the plaintiffs, I think if you read that case, there's
11 also the statement something to the effect that -- and maybe
12 I'm confusing this with a different case, I don't think I
13 am, but the plaintiff's lawyers, apparently, did an
14 admirable job of it, because the jury believed that ten
15 percent of the revenues were caused.

16 So, anyway, I feel like I've heard enough on this
17 issue. And I feel that there's nothing you're going to say
18 that's going to -- I don't think there's anything different
19 to be said about Interrogatory No. 6, which asks for the
20 identity of the persons known to you to have knowledge of
21 Federal revenue and profits, including revenues and profits
22 attributable to the use of Blaze Advisor software by Chubb &
23 Son, a division of Federal. It is a slightly broader
24 formulation, but I think it's asking the same thing in an
25 interrogatory for people who have knowledge; although,

1 honestly, I suspect that the answer you're going to get, if
2 you get an answer, is none.

3 MR. HINDERAKER: Well, what we got was -- you
4 know, what happens in the motion papers is that first the
5 interrogatory is rewritten by Federal as if we're just
6 asking for persons with knowledge of attribution to revenue
7 from the infringement. But the document request is identify
8 all persons known to you to have knowledge of Federal's
9 revenue and profits, and then it goes on to say including.
10 So we ultimately got a supplemental answer that a Ramesh
11 Pandey, who has a title of Enterprise Architect Practice, is
12 their one and only witness that they're putting up. And
13 because there's no -- because he'll testify that none of the
14 profits are attributable to -- well, I'm looking for
15 somebody who has a foundational basis and can talk about
16 Federal's revenues and profits. They don't have an answer
17 to that interrogatory. No one has been disclosed that can
18 talk about Federal's revenues and profits.

19 THE COURT: Okay. Interrogatory No. 4, every
20 software application or system utilized by Chubb or by any
21 other division or entity other than Chubb that utilizes in
22 any way the Blaze Advisor software. But the sticking point
23 is sub (a) and sub (b): Identify all persons known to you
24 to have knowledge of such software application and/or
25 system, and (b) Identify all documents relating to each such

1 software application and system. I don't need argument on
2 this. I'll tell you what I think.

3 You're entitled to the general information about
4 what the software applications or systems are. You're
5 entitled to that identification. You're entitled to
6 identification of people with knowledge and documents
7 relating. However, the way it's formed is really overbroad
8 because it could mean anybody in the business unit. And so
9 -- well, I'll save my comments on that further until I come
10 back. You're clearly entitled to information of this
11 nature. It's a question of where the line is drawn, in my
12 view.

13 MR. HINDERAKER: Could I ask the Court to consider
14 one other element on this?

15 THE COURT: Sure.

16 MR. HINDERAKER: Ultimately, we got a supplement
17 response that gave us 15 applications, but I have no idea
18 what entity is using them because they refuse to say, well,
19 this application is used by Chubb & Son, this application is
20 used by United Kingdom, this application is used by some
21 other division of Federal that's not Chubb & Son. I don't
22 know where they're being used.

23 THE COURT: Okay. Understood.

24 Need to respond to that particular statement?

25 MR. DATZOV: That wasn't part of the discovery

1 request.

2 THE COURT: Okay. All right. We're going to take
3 a break. I will be back here at 5:00.

4 (A brief recess was taken.)

5 THE COURT: All right. We're back on the record
6 in the matter of Fair Isaac Corporation v. Federal Insurance
7 Company, Case No. 16-CV-1054.

8 I indicated to the parties that I would rule from
9 the bench on these motions, if possible, and I am going to
10 do that. I want to say at the outset a couple of things.

11 Number one, I do this because it's good for the
12 parties, it's helpful if you can just get the issues
13 resolved and move forward. I think that's of greater
14 service than waiting for a lengthy written opinion when I
15 know what the written opinion would be. And so I am going
16 to give you my ruling on the record. I will follow it up
17 with a very short written order that explains various things
18 in response to the motions. So that's number one.

19 Number two, I do want you to know that even though
20 I am going to rule from the bench, the oral argument is
21 useful. It does help me clarify my thinking. It actually
22 has changed my mind on a couple of issues here today. So
23 don't assume that I just came in here with my mind made up
24 and didn't matter what you said, because that's not the
25 case.

1 So a couple of other preliminary remarks: It's a
2 case, obviously, involving breach of contract and
3 copyright-infringement allegations. And those allegations
4 are based on out-of-scope use of the copyrighted works and
5 post-termination use of license software. The defendant has
6 counterclaimed for breach of contract, alleging that the
7 plaintiff wrongfully terminated the contract and for breach
8 of the covenant of good faith and fair dealing. And at
9 issue today are hard-fought motions about compelling
10 documents that will be important to the remainder of the
11 discovery.

12 The allegations or the amount in controversy in
13 this case is, depending on one's perspective -- obviously,
14 the parties disagree -- but at least tens of millions, if
15 not more than that, that is at stake in the litigation. And
16 that's all relevant here because ultimately there is very
17 little, if anything, as we'll go through this that I see
18 that is disproportionate considering the needs of the case
19 and considering the amount in controversy.

20 So one last sort of preliminary remark and then
21 I'll turn to the defendant's motion to compel first because
22 that was the first filed. These are discovery motions. As
23 everyone knows, the discovery standard is that the discovery
24 sought has to be relevant and proportional to the needs of
25 the case considering, among other things, the amount in

1 controversy, as I indicated. That doesn't mean that
2 discovery is boundless or that if the case involves tens of
3 millions, the lawyers can spend tens of millions in
4 discovery. But it is broad discovery. And with that in
5 mind, let me turn to the defendant's motion to compel.

6 I am going to grant the motions relative to
7 Requests for Productions 16 through 18, and specifically --
8 let me pull up those requests so that I have the language in
9 front of me -- 16 requests documents that evidence or refer
10 or relate to licensing revenues received from the works 2006
11 to the present. 17 is documents that show the amount of the
12 licensing fee for each perpetual license to the works from
13 2006 to the present. And 18 is the average amount per seat
14 you've received in licensing revenues. Those are all
15 different. They're not -- you are asking for -- the
16 defendants are asking for revenues that are either
17 calculated on a different basis than the contract licensing
18 fee at issue in this case, but the damages in this case on
19 breach of contract will involve the question ultimately of
20 the market value of what was used. And while the plaintiff
21 wants to argue that it is defined by our pricing matrix and
22 what the parties have agreed to in their 2006 agreement, I
23 believe that the defendants have the right to say market
24 value presumes a willing buyer and a willing seller and,
25 therefore, what the licensed software would be valued more

1 generally in the marketplace is relevant and is important to
2 the experts that the defendants will eventually retain to
3 address the question of contract damages. So those
4 documents are discoverable. They're within the scope of
5 permissible discovery in my judgment and are not
6 disproportional to the needs of the case.

7 On Request for Production No. 19, which requests
8 essentially all licensing agreements -- well, not
9 essentially, it requests all licensing agreements for the
10 works at issue from 2006 to the present, I do understand the
11 plaintiff's objection to that request, but I am going to
12 grant that request, as well.

13 The reasoning for this is that, first of all,
14 while the defendants want to raise the issue of
15 non-enforcement and what that says about the good faith --
16 or breach of the covenant of good faith and fair dealing
17 with respect to the parties at issue in this case, they
18 can't make that argument without having discovery of what
19 licensing agreements may or may not have had similar
20 provisions that were or were not enforced.

21 In addition, I do think the language of those
22 other agreements may or may not ultimately lead to the
23 discovery of admissible evidence or the discovery of expert
24 opinions on some of the meaning of the terms at the contract
25 at issue or may shed light on the meaning of 10.8 and 9.2 at

1 issue in this particular contract. That is not to say --
2 well, at this stage, that information is reasonably
3 calculated to lead to the discovery of admissible evidence.
4 Whether it ultimately results in admission of evidence is
5 not for me to say, obviously.

6 On the related question of redacted documents,
7 counsel for the plaintiffs has clearly indicated that they
8 will produce any documents that were inadvertently redacted
9 for relevance in an unredacted fashion and will produce a
10 privilege log for those documents for which the redaction is
11 based on privilege. So I don't believe there's a live
12 dispute there with respect to those issues.

13 With respect to Requests for Production No. 13, I
14 am going to deny that request. I think as worded it is
15 extremely broad, and I understand that the defendants' point
16 is we want to make sure that we're not playing a game of
17 gotcha that the plaintiffs don't say oh, we don't call this
18 a licensing agreement, we call this a software packaging
19 agreement or something of that nature, but as drafted the
20 request for production would require production of
21 potentially things like employee agreements or third-party
22 vendor contracts. So I am not going to -- I am going to
23 order that that not be produced.

24 On Interrogatories No. 6 to 9, I think we are
25 dancing a little bit on the head of a pin perhaps. I don't

1 think there's much of a dispute between the parties on this,
2 but for sake of clarity, here's what I will order the
3 plaintiffs to do: For each of the interrogatories just
4 clearly state what the category of damages is, what the
5 calculation of that category is, and the arithmetic, if you
6 will, by which you calculated it. So, for example, one of
7 the interrogatory answers that has been discussed in the
8 briefing has category one damages that are stated, and the
9 amount is calculated, and now the brief has, I think, made
10 that calculation pretty clear. I think the interrogatories
11 need to be supplemented so that all of that is in the form
12 of the interrogatory answer.

13 This is very clearly -- I want to make it very
14 clear that that is without prejudice to the notion that
15 those damages calculations at present are not binding on the
16 plaintiff and are not in any way somehow precluding the
17 plaintiff from offering numbers based on its expert's
18 analysis or based on discovery that it receives subsequent
19 to this order.

20 Those are, I think, all of the items on the
21 defendant's motion to compel.

22 On the plaintiff's motion to compel I am going to
23 -- I'm going to give you a little bit longer discussion of
24 my rationale, so bear with me.

25 But Requests for Productions 30 through 32 I am

1 going to grant. Those requests essentially ask for summary
2 reports of gross and net -- or gross and net revenues and
3 gross and net profits for products and services sold by the
4 business units or entities that used Blaze Advisor. And as
5 we've discussed here today, 32 may simply be cumulative of
6 30 and 31, but it may actually have different documents that
7 are responsive that wouldn't necessarily be strictly
8 responsive to 30 and 31. So I'm ordering that those all be
9 produced.

10 The heart of the dispute on this topic, in my
11 mind, is whether this revenue and this profit information is
12 discoverable under a disgorgement of profits theory, and it
13 is. The disgorgement of profits remedy is clearly allowed
14 by Statute 17 U.S.C. 504. The case law makes it clear that
15 those profits can be either direct or indirect, meaning, as
16 I understand it, direct from the sale of the infringing
17 products or indirect from the use of the infringing
18 products. And I think the parties are in agreement with
19 that general characterization.

20 Where they disagree is that the indirect profits
21 in this case, as the defendants would say, result from the
22 use of back-office software. I don't know that that is the
23 plaintiff's theory. I don't believe that it is or at least
24 they would say that it is not. Those profits are certainly
25 hard to prove. And I would imagine that there will be

1 motion practice, both summary judgment and/or motions in
2 limine, that will address whether and when this evidence can
3 come in. But that is to say that's after discovery.

4 And I want the parties to know I did read all of
5 the cases that were cited here and discussed, and my reading
6 of the cases is this: *IBM, Complex Systems*, and *Point 4*
7 *Data* did talk about you have to have a causal connection or,
8 you know, these are speculative, but all of those
9 discussions took place in the context of summary judgment or
10 motion in limine, which is to say it took place after the
11 evidence had been produced in discovery. And in the *IBM*
12 case, I'm not quoting it exactly, but the court said, The
13 number of cases where there are indirect profits resulting
14 from the use of software should only -- you know, it should
15 be the seldom case -- I can't remember if they said rare
16 case -- that gets to a jury. But that's the point, is
17 that's a decision for another day, as Mr. Hinderaker has
18 said.

19 So the cases cited on page 8 of the defendant's
20 motion, which were argued here today as being indicative of
21 the principle that, no, it matters to discovery that there
22 be a causal element shown, those are all distinguishable.
23 And I think Mr. Hinderaker and I agree on what those
24 distinctions are.

25 The *Bell* case involved tax returns of a company

1 that used a photograph of Indianapolis, which was an
2 infringement, and the tax returns were not discoverable.

3 The *Gray* case involved a derivative work and
4 bifurcated discovery pending a decision on infringement
5 because the infringement contention was in the court's view
6 very thin, and so the court said we're not going to deal
7 with whether this revenue information is discoverable at
8 this point.

9 *Lucky Break* dealt with infringing commercials
10 shown where the commercials related to 16 products sold by
11 Kay Jewelers and the plaintiff wanted profits associated
12 with all of the products sold by Kay Jewelers, and they had
13 already gotten discovery on the profits associated with the
14 products at issue. So I think that actually does prove
15 Mr. Hinderaker's point.

16 And *Classical Silk*, I think it is, requested
17 profits for a period and a geographical area that were not
18 connected to the alleged infringement, all of which is a
19 long-winded way of saying I agree with the defendants that
20 they have to connect in some fashion the request with the
21 allegation of infringement. But the document requests in
22 this case were tailored to attempt to get at that. It asked
23 for profits and revenues associated with service and
24 products sold by divisions that used the Blaze software.
25 And at this stage of the litigation, they can't further

1 tailor that, and they don't have either the expert analysis
2 or the evidence which would reasonably allow them to say
3 more about causation or reasonably related, if you want to
4 use that phrase. So I'll order that those documents be
5 produced.

6 Interrogatory No. 6: People with knowledge of
7 Federal's revenues and profits, including Chubb. Here's
8 what I have to say about that. It's not tailored in the
9 same fashion. Okay? So I think you have to provide
10 information of the people who have knowledge of the profits
11 and revenues associated with the divisions or entities that
12 used Blaze software.

13 You do not have to admit by way of answering that
14 interrogatory that you agree with the implicit contention
15 that there were any revenues derived from the use of Blaze
16 software. I don't think that the plaintiffs are intending
17 that that be a game of gotcha, but let me say on the record
18 it won't be. But the scope of what you have to provide is
19 parallel to and no greater than the documents relating to
20 revenues and profits that you're going to provide in
21 response to 30 to 32 of the document requests.

22 On Interrogatory No. 4, here 's what I want the
23 defendants -- here's what I will order the defendants to
24 produce: In addition to the information on the applications
25 and systems, produce the information with respect to the

1 business units that are using those applications and
2 systems. Whether or not it was exactly asked in the
3 interrogatory is fair game. And I don't see a value at this
4 point in having the parties go back and re-serve
5 interrogatories, which everyone understands what they're
6 getting at. And, by the way, I will say to the defendants
7 you'll notice that I also -- that's something that I have
8 done for both sides. I haven't made you go back and redraft
9 interrogatories or document requests to the extent that I
10 have changed slightly the scope of them.

11 With respect to identifying people and documents,
12 here's what I'll order the parties to do. I don't feel
13 capable of redrafting that. As I indicated on the record
14 earlier, I think those are overbroad by the way they're
15 phrased because they could literally mean everybody in Chubb
16 & Son and could literally mean hundreds or thousands of
17 documents that are simply not related to this lawsuit.

18 So the parties will meet and confer on those two
19 aspects of Interrogatory No. 4. If you can't come to an
20 agreement on that through a meet and confer process, and I
21 say this hesitantly -- I don't want the defendants to use
22 this as an opportunity, but if you can't come to a
23 reasonable agreement on this, then I think it's got to be
24 redrafted to get at what the plaintiffs want in a way that
25 is narrower. But, hopefully, that won't be necessary.

1 Okay?

2 I'm sorry. You guys got to talk for an hour and
3 some, and I only talk for 20, so I apologize for keeping you
4 here late and for going on at length. I want to make it
5 clear what the ruling is and why -- at least what my
6 rationale and basis for that is in the event that either of
7 you wishes to, I guess in this case, appeal that to Judge
8 Wright.

9 So, as far as I'm concerned, the motions have been
10 ruled upon. I will follow up with a brief written order
11 that references comments on the record and gives a brief
12 explanation. But the order is as of today. Okay? Very
13 well.

14 Anything further for the plaintiffs?

15 MR. HINDERAKER: (Inaudible).

16 THE COURT: Okay.

17 MR. HINDERAKER: But I think it's for both. We
18 have a joint motion before the --

19 THE COURT: Oh, yes. I have that. I have new
20 dates for you in light of what I've done. And, again, it is
21 my intention to keep you moving along. And I don't have
22 those dates here. Essentially what I did was move
23 everything out, as you had suggested, four months from
24 today. So discovery would close -- here it is. All right.
25 Discovery would close June 29th. And I'll re-issue an

1 order, but let me tell you what these basically say. Fact
2 discovery closes June 29th. Expert disclosures, the first
3 set, the 30 days later, will be August 3rd. Rebuttal
4 witnesses and reports, September 14. Reply reports,
5 September 28. That's for the plaintiff.

6 The defendant has the same dates for the same
7 categories. Non-dispositive motions, June 29. And
8 non-dispositive motions regarding experts, October 26.
9 Dispositive motions filed, served and scheduled by December
10 21. And trial readiness, April 29 of 2019. But those will
11 all be embodied in a written order as well, but wanted to
12 get those to you now. Okay.

13 Anything further, Mr. Hinderaker?

14 MR. HINDERAKER: No, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. DATZOV: Nothing from us, Your Honor. Thank
17 you for your time.

18 THE COURT: All right. Thank you all. Appreciate
19 the argument and the interesting issue. And everybody have
20 a good evening.

21 MR. DATZOV: Thank you, Your Honor.

22 THE COURT: All right.

23 (Court adjourned at 5:30 p.m.)
24
25

* * *

I, Debra Beauvais, certify that the foregoing is a correct transcript of the audio recording of the proceedings in the above-entitled matter, to the best of my abilities.

Certified by: s/Debra Beauvais
Debra Beauvais, RPR-CRR

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